

Chapter 22.1

REGULATIONS OF SMOKING*

Sec. 22.1-1. Leg is la tive pur pose and in tent.

Based on a substantial body of scientific and medical evidence and on the 1986 Report of the Surgeon General entitled "The Health Consequences of Involuntary Smoking", the City of Lynchburg hereby acknowledges that passively inhaled tobacco smoke poses a potential health hazard to persons exposed thereto. The purpose of this chapter is to protect the public health, safety and welfare by regulating the smoking of tobacco in designated public places and places of employment in a manner that recognizes the competing interests of smokers and non-smokers, and the burdens hereby imposed on persons in control of the places regulated or places of employment to implement more stringent standards applicable to the particular establishment o place of employment. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-2. Defi ni tions.

The following words and phrases shall, for purposes of this chapter, have the meanings respectively ascribed to them:

(a) "Bar" or "lounge area" shall mean an area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the sale of food is merely incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar or lounge area, the term "bar" or "lounge area" shall not be construed to encompass an entire restaurant or any dining area.

(b) "Child care facility" shall mean any facility which regularly keeps more than five non-related children or keeps five or less non-related children in a non-residential setting, whether public or private.

(c) "Food store" shall mean any supermarket or grocery store which is designed and arranged to display food products and which has as its primary business purpose the sale of food products to consumers for consumption off the premises, and not for resale.

(d) "Health care facility" shall mean any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological conditions, including but not limited to, hospitals, clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any physician, dentist, psychologist, psychiatrist, physiologist, podiatrist, optometrist, chiropractor or optician.

(e) "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

(f) "Public meeting or hearing" shall mean any meeting, assembly or hearing held in a public building or building leased for a public purpose which is open to the public for the conduct of the affairs of, and the transaction of business by, any legislative, administrative or advisory body or agency of the city, including boards, commissions, authorities, committees, and any other subordinate groups thereof, receiving or expending, and supported in whole or in part by, public funds.

(g) "Public place" shall mean an enclosed area available for use by, or accessible to, the general public during the normal course of business, conducted by either private or public entities.

***Cross reference**—Air pollution generally, Ch. 4; smoking on intraurban buses prohibited, § 12-40.

(h) "Restaurant" shall mean any building, structure, or area used as, maintained as, advertised as, or held out to the public to be an establishment where food is made available to be consumed on the premises. Restaurants shall also include any cafeteria area or other area in any private place of employment, industry or other place of employment that has been set aside or designated for the consumption of food by employees.

(i) "Retail or service establishment" shall mean any establishment which offers goods or services for sale to the general public.

(j) "Shared work area" shall mean any enclosed area on the premises of a place of employment (1) in which two or more employees are assigned to work for most of their work day, (2) where such employees must share common work spaces, equipment or facilities, and (3) where each such employee is aware of or readily available to observe the activities of others taking place in his or her work area.

(k) "Smoke" or "smoking" shall mean the carrying or holding of a lighted or smoldering pipe, cigar or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling or exhaling of a pipe, cigar, or cigarette of any kind.

(l) "Theater" shall mean any indoor facility or auditorium, open to the public, which is primarily used for, or designed for, the purpose of exhibiting any motion picture, stage production, musical recital, dance, lecture or other similar performance. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-3. Smoking prohibited in certain public places.

(a) It shall be unlawful for any person to smoke in any of the following public places:

- (1) Elevators, regardless of capacity, except in an elevator located in a single-family dwelling.
- (2) Retail, wholesale, discount and service establishments and financial institutions serving the general public, including, but not limited to, department stores, grocery stores, convenience stores, drug stores, clothing stores, shoe stores, hardware stores, banks, savings and loan institutions, hair salons and barber shops.
- (3) Indoor service lines, cashier areas, and counter service areas.
- (4) Public restrooms.
- (5) Health care facilities, regardless of capacity.
- (6) Rooms in which a public meeting or hearing is being held.
- (7) Places of entertainment, including, but not limited to, theaters, concert halls, gymnasiums, auditoriums, or other enclosed arenas; except smoking by performers as part of the production.
- (8) Art galleries, libraries, museums, and similar cultural facilities.
- (9) Educational facilities, whether public or private, in common areas such as classrooms, offices, hallways, libraries, auditoriums, and public meeting rooms.
- (10) Child care facilities, whether public or private.
- (11) Indoor facilities used for recreational purposes, including, but not limited to, bingo halls, bowling centers, and skating rinks.
- (12) Any part of a restaurant designated a "no smoking" area pursuant to the provisions of this chapter.
- (13) Buildings owned or leased by the city or the school board used for public purpose with the exception of lawfully designated smoking areas.
- (14) Meeting houses, community centers, and similar facilities open to the public at large.

(15) Vehicles owned or leased by the city and vehicles owned or leased by other persons and used regularly for public transportation including, but not limited to, transit buses and school buses. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-4. Regulation of smoking in certain private places of employment.

Any employer who owns and operates a business within the city limits and who employs five (5) or more employees, who regularly work on the business premises during common hours, shall have the responsibility to provide, to the extent reasonably practicable, smoke-free work areas for nonsmoking employees who work in a shared work area or space. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-5. Designated no-smoking areas in restaurants.

(a) Any restaurant having a seating capacity for forty (40) or more persons shall have a designated no-smoking area sufficient to meet customer demand and comprising at least twenty-five percent (25%) of the seating capacity of such restaurant. The designated no-smoking area shall be located in a separate room if one is available in the restaurant or, if no separate room is available, it shall be located in a compact and contiguous area as far removed from areas where smoking is permitted, and closest to the best source of ventilation, as is reasonably possible under applicable building code and fire regulations. In determining whether the designated non-smoking area is of sufficient size to comply with this ordinance, seats in any room or area which is closed for business at the time of determination shall not be counted.

(b) In determining whether a restaurant is subject to the provisions of paragraph (a), the following shall not be included:

- (1) Seats in the bar or lounge area of a restaurant.
- (2) Seats in any separate room of a restaurant which is used exclusively for private functions.
- (3) Seats located out-of-doors.

(c) Any restaurant required to have a designated no smoking area shall post signs in accordance with the provisions of Section 22.1-8 at each entrance to the establishment indicating that a no smoking area is available. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-6. Exceptions to this Chapter.

The prohibitions of this chapter shall not apply within the following areas:

- (a) Lawfully designated smoking areas which meet the conditions set forth below in Section 22.1-7.
- (b) An area of a theater commonly referred to as a lobby if physically separated from the spectator area. Theaters are encouraged to provide separate areas in lobby areas for both smokers and nonsmokers.
- (c) Office or work areas which are not shared work areas and which are not entered by the public in the normal course of business or use of the premises. For purposes of this ordinance an office must be a totally enclosed area, areas that have been divided into separate work areas by partitions shall not be considered offices and shall constitute shared work areas if other employees are located adjacent to such partitions.
- (d) Bars and lounge areas.
- (e) Any tobacco shop or store primarily concerned with selling tobacco and smoking implements.
- (f) Those health care facilities or portions thereof which engage primarily in the treatment of patients suffering from alcohol and other chemical dependency or abuse, or psychiatric disorders or illnesses when implementation of the smoking prohibitions contained in this ordinance would, in the written opinion of attending physicians, produce a significant risk of worsening a patient's mental health.

(g) Buildings owned or leased by the Commonwealth of Virginia, and the federal government and its agencies.

(h) Restaurants, conference or meeting rooms, ballrooms, and public or private assembly rooms while these places are being used exclusively for private functions. The fact that tickets to such functions may be offered for sale to the public or guests may be invited to such functions does not prevent the functions from being private functions.

(i) Office or work areas which are not shared work areas and which are not entered by the public in the normal course of business or use of the premises.

(j) Areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another, and that consist primarily of walkways and seating accommodations.

(k) In the in-patient sleeping quarters of any health care facility, except hospitals. Each facility shall make a reasonable effort to assign patients to sleeping rooms according to the patient's individual nonsmoking preference.

(l) The sleeping quarters of nonambulatory hospital patients, when the physician writes an order in the patient's record allowing that patient to smoke. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-7. Designated smoking areas.

The owner or person in charge of any building, structure, space, place or area in which smoking is prohibited may designate separate rooms or areas in which smoking is permitted, provided that:

(1) The designated smoking area should preferably be limited to twenty five (25) percent, but in any event shall not exceed fifty (50) percent of that portion of the building, structure, space, place or area open to the general public.

(2) Notwithstanding the fifty (50) percent limitation, the designated smoking areas may not encompass any area outlined in Section 22.1-3, subsections (a) (1), (3), (4), (6), (12) and (15).

(3) Designated smoking areas shall be separate to the extent reasonably practicable from those rooms or areas entered by the public in the normal course of use of the particular business or institution.

(4) In designated smoking areas, existing ventilation systems and existing physical barriers shall be used when reasonably practical to minimize the toxic effect of smoke and the permeation of smoke into no smoking areas. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-8. Posting of signs.

(a) Any person who owns, manages or otherwise controls any building or area in which smoking is regulated by this chapter shall post in an appropriate place in a clear, conspicuous, and sufficient manner "Smoking Permitted" signs or "No Smoking" signs (or a sign displaying the international "No Smoking" symbol consisting of a pictorial representative of a burning cigarette enclosed in a red circle with a red bar across it). Print on such signs shall be at least one (1) inch in height and the international symbol, if used, shall have a circle of at least four (4) inches in diameter.

(b) Every restaurant regulated by this chapter shall post at or near its entrance a sign stating that a no smoking section is available.

(c) "No Smoking" signs may, but are not required to, contain language that smoking is prohibited by city ordinance and that violation of the no smoking prohibition is a Class 4 misdemeanor punishable by a fine of up to one hundred dollars (\$100.00). (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1-9. Structural modifications.

Persons regulated by the provisions of this chapter are encouraged to make such structural modifications to their respective buildings or structures as may be necessary to prevent or reduce the permeation of smoke from smoking areas into no smoking areas; provided, however, that nothing in this chapter shall be construed as requiring any such person to make such modifications. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1- 10. Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the prohibitions or restrictions of this chapter to fail to comply with its provisions.

(b) It shall be unlawful for any person to smoke in any area prohibited or restricted by the provisions of this chapter.

(c) Any person who violates the provisions of this chapter shall be guilty of a class 4 misdemeanor and each day of violation of any provision of this chapter shall constitute a separate offense. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1- 11. Enforcement.

(a) The provisions of this chapter shall be enforced by the director of health of the city or his/her duly authorized representatives.

(b) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the director of health of the city. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1- 12. Severability.

If any part, section, subsection, sentence, clause or phrase of this chapter is for any reason declared to be unconstitutional or invalid, such judicial decision shall not affect the validity of the remaining portions of this chapter. (Ord. No. O-89-173, § 1, 6-27-89)

Sec. 22.1- 13. Other applicable laws and policies.

This chapter does not in any way restrict the right of property owners to adopt more restrictive smoking policies, including the prohibition of smoking, and shall not be interpreted or construed to permit smoking where it is otherwise prohibited or restricted by other applicable statutes and ordinances, or the policies of individual establishments. (Ord. No. O-89-173, § 1, 6-27-89)

